

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

MARGIE McLAUGHLIN,	:
	:
Plaintiff	:
	:
v.	: CIVIL NO. 3:CV-06-1385
	:
KAREN L. FULTZ, <u>et al.</u> ,	: (Judge Kosik)
	:
Defendants	:

Memorandum and Order

I. Background

Margie McLaughlin is an inmate currently confined at the State Correctional Institution at Muncy (SCI-Muncy), Pennsylvania. She filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 14, 2006. Named as defendants in the original complaint are Karen L. Fultz, Sergeant Brittain and Correctional Officer Gondeiro, all employees of SCI-Muncy. McLaughlin sets forth allegations of denial of access to the courts and retaliation. On October 4, 2006, the Court issued an Order construing exhibits submitted by McLaughlin on July 27, 2006 to be a supplement to her complaint. (Doc. 10.) Service of the standing complaint (Docs. 1 and 10) was then directed on the three named defendants. Defendants thereafter filed a motion to

dismiss the complaint. Following Defendants' filing, Plaintiff submitted a document labeled "Amended Complaint." The Amended Complaint simply listed ten (10) additional defendants McLaughlin wished to bring in to the instant lawsuit. Plaintiff failed, however, to set forth any claims against the ten (10) additional defendants.

In an Order dated December 15, 2006, the Court denied without prejudice the motion to dismiss filed by the original three (3) Defendants, and afforded Plaintiff an opportunity to file a new amended complaint listing all defendants and setting forth the claims against them. (Doc. 28.) Plaintiff was advised that the amended complaint must be complete in all respects, a new pleading which stands by itself as an adequate complaint without reference to the complaint already filed. Young v. Keohane, 809 F. Supp. 1185, 1198 (M.D. Pa. 1992).

On December 21, 2006, apparently prior to receiving the Court's Order of December 15, 2006, Plaintiff filed a motion for leave to file an amended complaint. (Doc. 30.) In light of the December 15, 2006 Memorandum and Order, this motion will be denied as moot. On December 28, 2006, an Amended Complaint was filed by Plaintiff. (Doc. 34.) The amended complaint lists the ten (10) Defendants Plaintiff attempted to include by her filing of November 21, 2006, and this time does set forth claims against them. Plaintiff does not include the three (3) Defendants listed in the original complaint in this action. As such, the 3 original Defendants have filed a motion to dismiss the amended complaint as they are not listed as Defendants.

Plaintiff opposed the motion stating that she fully intended to keep the original 3 Defendants in this action. For the reasons that follow, the complaint in this action will consist of Documents 1, 10 and 34. The 3 Defendants named in the original complaint will be directed to file a response to the complaint within twenty (20) days. Service of the amended complaint will be directed on the 10 newly named Defendants. Also pending is a motion for temporary restraining order filed by Plaintiff on March 12, 2007. (Doc. 38.) Defendants Fultz, Brittain and Gondeiro will be directed to file a response to this motion within twenty (20) days.

II. Discussion

Defendants Fultz, Brittain and Gondeiro move to dismiss the amended complaint on the basis of failure to state a claim. Their sole reason is that Plaintiff has not named them in the amended complaint filed on December 28, 2006 (Doc. 34). When the Court issued the Order of December 15, 2006 affording Plaintiff the opportunity to file an amended complaint in this action to include the 10 new defendants, Plaintiff was informed that any amended complaint submitted must be complete and stand by itself. (Doc. 28.) While Plaintiff fails to include the original 3 Defendants in her amended filing, it is clear in reviewing the document that she intends the 10 Defendants to be in addition to the original 3 Defendants named. In light of her pro se status, the Court will construe the standing complaint in this action to consist of Documents 1, 10 and 34. Defendants Fultz, Brittain and Gondeiro will

be directed to file a response to the complaint and the pending Motion for Temporary Restraining Order within twenty (20) days. Service of the standing complaint and Motion for Temporary Restraining Order will be directed on the 10 newly named Defendants. In light of such, the pending motion to dismiss filed by Defendants Fultz, Brittain and Gondeiro will be denied.

ACCORDINGLY, THIS 2nd DAY OF JULY, 2007, in accordance with the foregoing, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's Motion for Leave to Amend to State a Claim (Doc. 30) is **denied as moot** in light of this Court's Order of December 15, 2006.
2. The standing complaint in this action consists of Documents 1, 10 and 34. The United States Marshal is directed to serve the standing complaint (Docs. 1, 10 and 34) as well as Plaintiff's Motion for Temporary Restraining Order and brief in support thereof (Docs. 38, 39) on the newly named ten Defendants set forth in Document 34.
3. The motion to dismiss the amended complaint filed by Defendants Fultz, Brittain and Gondeiro (Doc. 40) is **denied**. Within twenty (20) days from the date of this Order, these Defendants shall file a response to the amended complaint as well as Plaintiff's pending motion for temporary restraining order.

s/EDWIN M. KOSIK

United States District Judge